

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD C. BACHMAN,

Plaintiff, No. CIV S-03-1735 LKK PAN P

vs.

S. KUHN, et al.,

Defendants. ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed this action claiming that his constitutional rights were violated by use of excessive force and fabrication of prison disciplinary charges for assaulting correctional officers. Plaintiff was found guilty of the disciplinary charges and assessed 360 days of good time credits. By order filed December 2, 2004, this action, which was then proceeding on plaintiff's fourth amended complaint, was dismissed as barred by the rule announced in Heck v. Humphrey, 512 U.S. 477 (1994). Judgment was entered on the same day.

Plaintiff filed an appeal from the judgment. On February 22, 2006, the United States Court of Appeals for the Ninth Circuit remanded the action to this court for further proceedings on plaintiff's claim that his rights under the Eighth Amendment were violated by use of excessive force. On March 27, 2006, plaintiff filed a proposed sixth amended complaint, and

1 on May 22, 2006, plaintiff filed a proposed seventh amended complaint. Plaintiff has not filed a
2 motion for leave to amend his fourth amended complaint. Cf. Fed. R. Civ. P. 15. Moreover, the
3 allegations of the proposed new complaints do not set forth the Eighth Amendment claim on
4 which this action will proceed with sufficient clarity to support service of either complaint on
5 defendants. This action will proceed on the Eighth Amendment excessive force claim raised in
6 the fourth amended complaint filed May 18, 2004.

7 Plaintiff's fourth amended complaint states a cognizable claim for relief pursuant
8 to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the amended complaint are
9 proven, plaintiff has a reasonable opportunity to prevail on the merits of this action.

10 In accordance with the above, IT IS HEREBY ORDERED that:

11 1. Service is appropriate for the following defendants: J. Kuhn; G. Griffith; M.
12 Friend; and S. Hollingsworth.

13 2. The Clerk of the Court shall send plaintiff four USM-285 forms, one
14 summons, an instruction sheet, and a copy of the amended complaint filed May 18, 2004.

15 3. Within thirty days from the date of this order, plaintiff shall complete the
16 attached Notice of Submission of Documents and submit the following documents to the court:

- 17 a. The completed Notice of Submission of Documents;
- 18 b. One completed summons;
- 19 c. One completed USM-285 form for each defendant listed in number 1
20 above; and
- 21 d. Five copies of the endorsed amended complaint filed May 18, 2004.

22 4. Plaintiff need not attempt service on defendants and need not request waiver of
23 service. Upon receipt of the above-described documents, the court will direct the United States

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1 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
2 without payment of costs.

3 DATED: June 5, 2006.

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5 **UNITED STATES MAGISTRATE JUDGE**
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NOTICE OF SUBMISSION

Defendants.

OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____ Complaint/Amended Complaint

DATED:

Plaintiff